

APPROVED

**STATE ADVISORY COUNCIL ON THE
EDUCATION OF CHILDREN WITH DISABILITIES**

May 4, 2007

**Carmel Educational Service Center
Indianapolis, IN**

ADVISORY COUNCIL MEMBERS PRESENT:

B. Marra, D. Schmidt, G. Bates, S. Beasley, R. Burden, D. Downer, C. Endres, K. Farrell, C. H. Hansen, B. Henson, R. Kirby, B. Kirk, M. Johnson, B. Lewis, K. Mears, M. Ramos, J. Swaim, J. Swiss, S. Tilden

ADVISORY COUNCIL MEMBERS NOT PRESENT:

D. Geeslin, J. Hammond, J. Nally, C. Shearer, T. Wyatt

DEPARTMENT OF EDUCATION (DEL) STAFF PRESENT:

B. Alyea, P. Ash, K. Bassett, N. Brahm, S. Knoth, B. Reynolds, S. Scudder

GUESTS:

Nancy Holsapple, Director of Special Education for Old National Trail; Murray Pride, Superintendent, North Putnam Community School Corporation

VISITORS

Jennifer Akers (Family Voices), Liz Freeman Floyd (Autism Society/Parent), Susan Lockwood (IDOC), Mary Jo Germani (ISHA), Loui Lord Nelson (RAISE, Inc.)

INTERPRETERS:

Amy Evans

MEETING

D. Schmidt opened the meeting at 8:47 a.m.

MINUTES

K. Farrell requested the following correction to the minutes: on the third paragraph of page five, she requested the words "7 instructional days" to be changed to "10 instructional days."

J. Swaim moved to approve the minutes as corrected. Seconded by S. Tilden. Motion carried.

BUSINESS

B. Marra stated that Ball State Virtual Cooperative would be present at the June 1, 2007 meeting to discuss the 21st Century Charter School exiting the cooperative, and three new schools entering the cooperative. B. Marra noted that the General Assembly did not fund Virtual Charter Schools, but the Virtual Cooperative will still receive funding.

Old National Trail Presentation

B. Marra introduced N. Holsapple and M. Pride from the Old National Trail Special Services Cooperative. The cooperative was seeking approval to restructure from a joint service supply agreement to an inter-local agreement. Mr. Pride gave a brief history of Old National Trail Cooperative, which started with 11 employees, growing to the present 151 employees. None of the services provided by the cooperative are changing; the proposal merely seeks to revise how teachers and service providers are hired and supervised. All teachers and administration have agreed to the restructuring. Each school corporation will retain the teachers who are currently providing services in the respective corporations. N. Holsapple explained that they held public meetings and parent meetings for assurances that Old National Trail Special Services would remain the same. She explained that the teacher responsibilities will remain the same, but that teachers would have their contracts with different entities. She feels very confident about becoming an inter-local. B. Lewis asked how employee seniority would be affected. M. Pride stated that the employee seniority rights would follow the employees to their new schools. S. Tilden complimented the cooperative on its presentation and asked if there were any problems with the transition. M. Pride stated that Uniserve directors and other entity representatives were present to help overcome rumors and solve personnel issues. N. Holsapple stated that there were very few teachers with more than 15 years of experience. These teachers were given the option to remain employed by the North Putnam School Corporation. Some of these employees chose to

contract with the other school corporations because of health insurance and other benefits. SAC commended Old National Trail.

B. Lewis motioned to approve. J. Swaim seconded.

Motioned carried with one abstention.

PUBLIC COMMENT (Audience comments, if any)

No comments were made.

ARTICLE 7 DISCUSSION

N. Brahm presented visual flow charts for better understanding of the discipline rule. The rule had been rewritten and reorganized because of the Council request that the rule be sequential easier to comprehend.

RULE 29 DISCIPLINE PROCEDURES

511 IAC 7-44-2 Removals in General

N. Brahm discussed removals, noting that on the 11th cumulative day of removal, the public agency must decide if the removals constitute a pattern that result in a change of placement. Even if there is no change of placement, the public agency must serve the student. If it is a change of placement, the following must occur: 1) the school must give notice/procedural safeguards; 2) CCC determines services; and 3) manifestation within 10 school days.

If the conduct is a manifestation of the student's disability: 1) FBA/BIP; and 2) the student returns to the current placement unless modification of the BIP determines differently. If the conduct is not a manifestation of the student's disability: 1) the school can use regular discipline procedures; 2) CCC determines services and behavior services so conduct does not reoccur.

The 3 exceptions to the general rule are 1) weapons; 2) drugs; 3) serious bodily injury.

1) The school removes for the 45 instructions days; 2) School gives notice and procedural safeguards; 3) CCC determines interim alternative education setting (IAES); 4) Manifestation, but the student remains in IAES even if conduct is a manifestation of the student's disability.

Substantial likelihood of injury to student or others: 1) School goes to expedited due process and request that the IHO remove the child to an interim alternative educational setting; 2) hearing officer rules whether to remove 45 days.

The substantial likelihood of injury tool can be used in the following situation: If the school removes a student for 45 days for weapons, drugs, or serious bodily

injury, and the parent and school cannot agree on a placement for the student after the expiration of the 45 days, the school can go to expedited hearing claiming substantial likelihood of injury to self or others, and ask the hearing officer to extend the original 45 day setting pending the outcome of the hearing. B. Marra stated that in the case of guns, most schools attempt to expel students for the entire year pursuant to state law.

B. Marra stated that he would like the 45 day IAES provision to switch to instructional days per the IDEIA instead of remaining with 45 calendar days that is currently in Article 7.

R. Burden asked about the “stay put” during due process challenges to the 45 day IAES. N. Brahm noted that under IDEA '04, the stay put during due process challenges to removals for weapons, guns, and serious bodily injury was the IAES, until the hearing officer makes a decision, or the 45 days expires, whichever event occurs first.

N. Brahm discussed 511 IAC 7-44-1(e) and bus transportation. Discussion ensued.

R. Burden stated that he was under the impression that transportation was part of the instructional day, and whether this could be included in the language. G. Bates indicated that it was already in the Indiana Code. B. Marra suggested that the definition of instructional day include transportation time. R. Burden concurred.

B. Lewis moved to accept the language at 511 IAC 7-44-1. Seconded by K. Farrell.

C. Endres asked if they would clarify that the time on the bus can be a part of the instructional day. B. Lewis asked if this would count as a day of suspension when the child misses a day of instruction due to being suspended from the bus. B. Marra stated yes, most schools will find an alternative means for transportation. B. Marra indicated that unless a child is in a wheelchair and needs specialized transportation, this is not seen in the IEP.

Vote was called.

16 approved; 0 Opposed; 1 Abstention.

511 IAC 7-44-2 Change of Placement

J. Swiss moved to accept the as written. Seconded by S. Tilden.

B. Lewis asked about “unique circumstances.” N. Brahm said that the description of unique circumstance came from the comments to the federal regulations. N. Brahm noted that the Council previously voted that public agencies “shall” consider unique circumstances, which goes beyond the federal law’s requirement that public agencies “may” consider unique circumstances. N.

Brahm said that it will be difficult for public agencies to prove that they considered all the unique circumstances. R. Burden said the schools should look at any unique circumstance but understand the complexity of how a school would document this.

S. Tilden stated that he understood the concern from an administrative point of view but, also feels that schools should look at unique circumstances, and not have the option about looking at unique circumstances.

C. H. Hansen asked if parents are more likely to complain because the school does not feel that it is mandated to consider unique circumstances. B. Marra stated that he could give examples for either circumstance. However, if we go beyond the federal law, we have to be clear about our reasons for going beyond.

B. Kirk asked why a school corporation wouldn't want to take the circumstances into consideration. N. Brahm said that the discipline rules have tried to strike a balance between the need to educate students, while also keeping schools safe. Discussion ensued.

R. Burden stated that congress referred to the unique circumstances provision as the common sense clause, which gives flexibility to schools. B. Marra concurred, but noted that congress chose to use the word "may" instead of "shall."

S. Schmidt asked if B. Marra would change what the SAC votes upon and B. Marra stated no. However, he explained that he will recommend to the State Board of Education that the word "may" be used instead of "shall." S. Tilden requested that B. Marra explain to the State Board of Education why the Council prefers the word "shall" instead of the word "may". B. Marra stated that he would explain the situation to the board.

J. Swaim made a friendly amendment to change "shall" back to "may". S. Tilden seconded.

12 Approved; 5 Opposed; 0 Abstained.

K. Farrell motioned to accepted section 2 as amended. Seconded by J. Swiss.

14 Approved; 4 Opposed; 0 Abstained.

511 IAC 7-44-3

Sections 511 IAC 7-44-3 and 511 IAC 7-44-4 explain what happens if there is no pattern that constitutes a change of placement (section 3) versus what happens if there is a change of placement (section 4).

C. Endres motioned to accept language as written in 511 IAC 7-44-3. G. Bates seconded.

R. Burden noted his concern about how a school will select a teacher in section 3. B. Marra stated that in most cases common sense is applied. Discussion ensued.

Motion was called to vote.

18 Approved; 0 Opposed; 0 Abstained.

511 IAC 7-44-4

N. Brahm discussed the changes that were made to the rule.

J. Swaim motioned to accept the language at 511 IAC 7-44-4. C. Endres seconded.

17 Approved; 0 Opposed; 0 Abstained.

511 IAC 7-44-5 Manifestation determination

N. Brahm explained that IDEA '04 does not require manifestation determinations to take place in a CCC meeting. IDEA '04 states that manifestation determinations should be made by the parent, the public agency, and relevant members of the CCC (as determined by the parent and the public agency). N. Brahm noted that the council might want to consider continuing the Article 7 requirement that manifestation determinations be made by CCCs. This makes sense because the CCC will have to convene anyway to determine services. Also, it may be difficult for schools and parents to agree on who are the relevant members of the CCC. K. Farrell asked what a parent's recourse is currently if they disagree with a manifestation determination. N. Brahm said that if the parent disagrees, the parent would go to expedited due process or mediation. K. Farrell indicated that the outcome would be the same. C. Endres stated her concern of parents who have to take off work. If you don't make this a CCC decision, the parent might be forced to attend two meetings.

M. Johnson made a motion to change the language back to CCC meetings instead of the language from the federal regulations in (a) (d) (f) and (g). J. Swiss seconded.

18 Approved; 0 Opposed; 0 Abstained.

C. Endres motioned that the language at 511 IAC 7-44-5 with amendment be accepted.

18 Approved; 0 Opposed; 0 Abstained.

511 IAC 7-44-6 Interim alternative educational setting; weapons and drugs

B. Marra noted that Article 7 currently states 45 calendar days, but IDEA '04 changed this to 45 instructional days.

A discussion of threat and the potential of serious bodily injury to others ensued.

R. Burden asked for clarification on instructional days versus calendar days. B. Marra explained that instructional days buy more time for the parties involved to agree on services after the time in the IAES expires. S. Lockwood commented that she likes 45 instructional days because it gives the student additional time for therapy. B. Marra concurred. N. Brahm stated this situation is discussed in section (d)(3). K. Farrell stated that data has shown very few of these instances occur.

K. Farrell moved to approve language for section 511 IAC 7-44-6. J. Swiss seconded.

R. Burden asked for clarification of 'as appropriate' at subsection (d)(3). N. Brahm stated that it may be that the student already has an FBA, or that the child may need counseling. R. Burden suggested changes to the language address 'as appropriate.' Discussion ensued on how the language could be changed. N. Brahm stated that this language is verbatim from the federal regulations.

D. Schmidt asked if 'as appropriate' applies to both the FBA and the BIP. B. Marra stated that it does apply to both.

15 Approved; 3 Opposed; 0 Abstained.

511 IAC 7-44-7 Dangerous students

N. Brahm explained the language and made proposals to change the title. N. Brahm suggested that it be changed to: Substantial likelihood of injury to student or others. K. Farrell inquired as to how the heading reads on the chart that public agencies must use to report data to the Division. P. Ash stated that he would have to come back with that information. J. Swiss asked whether changing this title would require us to go back and change other section titles. K. Farrell stated that the title on the report is the title that should be used. N. Brahm stated that she would come back with that information.

B. Lewis recommended leaving the title as it is (dangerous student).

B. Lewis motioned to accept language at 7-44-7 and return to suggested titles. J. Swiss seconded

16 Approved; 0 Opposed; 2 Abstained.

511 IAC 7-44-8: Placement during due process proceedings for disciplinary actions

N. Brahm discussed the language specifically subsection (c). This section can be used when a child has been removed for weapons, drugs, or serious bodily

injury, and the school and parent cannot agree on a placement for the student after the 45 days expires. The school can go to expedited due process using the dangerousness provision, and ask the hearing officer to extend the time in the IAES pending the hearing officer's decision. The IHO would make the determination and could order the child into an IAES of a different nature. B. Kirk asked what the parent rights would be. N. Brahm stated that they would then go to the BSEA for appeal and then to district court if the BSEA upheld the IHO decision.

K. Farrell called for motion to accept language at 511 IAC 7-44-8 as written. G. Bates seconded.

B. Lewis asked whether the change of language in subsection (a) broadened this section. N. Brahm explained that this language was changed to recognize that a parent can appeal a school's decision regarding change of placement (for example, a school could decide that removals exceeding 10 cumulative days did not constitute a pattern that resulted in a change of placement. A parent could go to due process to challenge the school's determination).

15 Approved; 1 Opposed; 1 Abstained.

511 IAC 7-44-9: Protections for students not yet eligible for special education

N. Brahm discussed the language and the concerns that came up in prior discussion.

D. Downer asked what would happen under this section the parent requested an evaluation verbally. N. Brahm said that subsection (b)(2) would protect the student. J. Swiss inquired what if a parent e-mailed concerns the child may be having. N. Brahm stated that an e-mail constitutes putting concerns in "writing."

J. Swiss expressed concerns that B. Lewis had with regard to student not yet eligible in subsection (b). N. Brahm referred to subsection (a). Discussion ensued. B. Marra stated that this is in the student's best interest because it is saying that the school had notice of concerns and they did not provide services. K. Farrell suggested making subsection (a) as the lead in paragraph and make subsection changes.

J. Swiss motioned to accept language as reformatted at 511 IAC 7-44-9. K. Mears seconded.

R. Burden expressed concerns that the parent has to have their request in writing in order for the school to be deemed to have prior knowledge, whereas the school can express concerns orally. Discussion ensued. S. Beasley inquired about a child who takes a weapon to school at a very young age. Does the student get removed? B. Marra said that the school can expel the student and then evaluate and provide services. D. Downer noted that if the student exhibits a pattern of behavior then gets expelled, he would have had no security because the parents never expressed the need to the school for an evaluation. B. Marra

noted that response to intervention (RTI) should take place in this situation. C. Endres asked whether RTI would “catch” the problem. B. Marra stated that if RTI had been implemented, maybe the behaviors could have been stopped. B. Marra would like RTI to be implemented for all students, not just special education. B. Marra stated that the language in this section is straight out of federal law. Discussion ensued with regard to RTI and the language in this section. N. Brahm read from the comments to the federal regulations.

C. Endres called for the vote.

7 Approved; 7 Opposed; 0 Abstained.

511 IAC 7-44-10: Referral to law enforcement

D. Schmidt discussed changes that were in the language.

K. Farrell motioned to accept the language as written at 511 IAC 7-14-10..
Seconded by G. Bates.

15 Approved; 0 Opposed; 0 Abstained.

BSEA

K. Bassett, educational consultant with the DEL, presented the BSEA procedures to the SAC. K. Bassett gave examples of how the BSEA reviews the record and makes decisions when it receives petitions for review.

B. Kirk asked about the provision that allows the BSEA to appoint one member to review expedited hearing decisions. B. Marra stated that he would have to ask Kevin McDowell, General Council for the Indiana Department of Education.

ARTICLE 7 COMMENTS FROM THE PUBLIC

No comments were made.

OTHER BUSINESS

B. Marra reminded council that the feds will be here June 11, 2007, to conduct a hearing on Part C. If any Council member would like more information they may contact D. Downer.

Meeting adjourned at 2:50 p.m.